



September 24, 2012

American Hospital Association

Richard Umbdenstock
President and Chief Executive Officer
325 Seventh Street, N.W.
Washington, DC 20004

Federation of American Hospitals

Charles N. Kahn, III
President and Chief Executive Officer
750 9th Street, NW, Suite 600
Washington, DC 20001-4524

Association of Academic Health Centers

Steve Wartman
President and Chief Executive Officer
1400 Sixteenth Street, NW, Suite 720
Washington, DC 20036

Association of American Medical Colleges

Darrell G. Kirch, M.D.
President and Chief Executive Officer
2450 N Street, NW
Washington, DC 20037-1126

National Association of Public Hospitals and Health Systems

Bruce Siegel, MD, MPH
President and Chief Executive Officer
1301 Pennsylvania Avenue, NW
Suite 950
Washington DC 20004

Dear Chief Executive Officers:

As leaders in the health care system, our nation's hospitals have been at the forefront of adopting electronic health records for use in coordinating care, improving quality, reducing paperwork, and eliminating duplicative tests. Over 55 percent of hospitals have already qualified for incentive payments authorized by Congress to encourage health care providers to adopt and meaningfully use this technology. Used appropriately, electronic health records have the potential to save money and save lives.

However, there are troubling indications that some providers are using this technology to game the system, possibly to obtain payments to which they are not entitled. False documentation of care is not just bad patient care; it's illegal. These indications include potential "cloning" of medical records in order to inflate what providers get paid. There are also reports that some hospitals may be using electronic health records to facilitate "upcoding" of the intensity of care

or severity of patients' condition as a means to profit with no commensurate improvement in the quality of care.

This letter underscores our resolve to ensure payment accuracy and to prevent and prosecute health care fraud. A patient's care information must be verified individually to ensure accuracy: it cannot be cut and pasted from a different record of the patient, which risks medical errors as well as overpayments. The Centers for Medicare and Medicaid Services (CMS) is specifically reviewing billing through audits to identify and prevent improperly billing. Additionally, CMS is initiating more extensive medical reviews to ensure that providers are coding evaluation and management services accurately. This includes comparative billing reports that identify outlier facilities. CMS has the authority to address inappropriate increases in coding intensity in its payment rules, and CMS will consider future payment reductions as warranted.

We will not tolerate health care fraud. The President initiated in 2009 an unprecedented Cabinet-level effort to combat health care fraud and protect the Medicare trust fund, and we take those responsibilities very seriously.

Law enforcement will take appropriate steps to pursue health care providers who misuse electronic health records to bill for services never provided. The Department of Justice, Department of Health and Human Services, the FBI, and other law enforcement agencies are monitoring these trends, and will take action where warranted. New tools provided by the health care law authorize CMS to stop Medicare payments upon suspicion of fraud and to mine data to detect it in the first place. These efforts have contributed to record-high collections and prosecutions. Prosecutions in 2011 were 75 percent higher than in 2008. That said, we will continue to escalate our efforts to prevent fraud and pursue it aggressively when it has occurred.

The nation's hospitals share our goal of a health system that offers high quality, affordable care. We thank you for your relentless work toward this goal which can be better achieved once all Americans have privacy-protected electronic health records. The health information technology incentive program promotes electronic health records that go beyond documentation and billing and towards meaningful use as a foundation for new payment and delivery models. The Affordable Care Act has accelerated the spread of such models like Accountable Care Organizations, patient-centered homes, and value-based purchasing which shift the incentives away from volume and towards value. As we phase-in electronic health records, though, we ask for your help in ensuring that these tools are not misused or abused.

Sincerely,



Kathleen Sebelius
Secretary

U.S. Department of Health & Human Services



Eric H. Holder, Jr.
Attorney General

U.S. Department of Justice